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The Reconstruction of Southern Debtors: Bankruptcy After the Civil War

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Review

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Thompson, Elizabeth Lee *The Reconstruction of Southern Debtors: Bankruptcy after the Civil War*. University of Georgia Press, \$39.95, hardcover ISBN 820326240

Southern Self-protection

Debtors invoked federal law to protect businesses

Bankruptcy in the United States reflects two quintessentially American themes. First, with apologies to H.L. Mencken and Puritanism, it reflects the belief that somewhere, someone is getting away with legal theft; second, it embodies the essence of the ambiguities of federalism. Elizabeth Lee Thompson, in her examination of the 1867 Bankruptcy Act, reveals these two themes at work in the economic reconstruction of the post-Civil War South. Reappraising the effectiveness of the Act through an examination of three federal district courts--South Carolina, the Southern District of Mississippi, and the Eastern District of Tennessee--Thompson points out the debt relief it gave to the defeated South, the relative minimal impact the Panic of 1873 had upon its repeal, and the ironic exception it posed to the South's championing of states' rights.

The chief beneficiaries of bankruptcy were leading secessionists and Confederates; not surprisingly, the application of the Act facilitated the continuation of the antebellum economic class structure. Thompson discovered that the highest rate of filings occurred immediately following passage of the bill and that native Southerners filed for voluntary bankruptcy more frequently than the nation as a whole. These patterns indicated that the Act was invoked to relieve the burdens of debt carried over from before, during, and after the War and the primary beneficiaries of debt relief were local Southerners. There was little opprobrium attached to being an agent of the federal government when it was connected to relief from one's creditors. Quickly returned to work, secessionist lawyers found bankruptcy to be among the most lucrative parts of their Reconstruction practice. Soon after the passage of the Act, the *Charleston*

Daily Courier printed pamphlets instructing local residents how to use it while the *Jackson Weekly Clarion* sold filing blanks--a kind of do-it-yourself bankruptcy filing kit--in bulk. North Carolina Senator Augustus Merrimon arguing against repeal pointed out how it had been a great boon, a great blessing to Southern pride (58).

That bankruptcy affirmed the status of the well-born and lucky and favored those with assets should not be surprising for the Reconstruction South. Bankruptcy, as recent commentary has pointed out, is a legal process for those who others think already command sufficient resources to be offered credit but who come to suffer an interruption in the ability to bear the burdens of their indebtedness. The rare representation of white women and African Americans in bankruptcy courts in the Reconstruction South illustrated the exceptions that demonstrated the way state exemptions and federal process combined to benefit an existing economic and social structure. When married women engaged in commerce, courts, rather than merging their interests with their husbands under the doctrine of *femme covert*, construed the filing to protect husbands' assets. With few resources at the end of the Civil War, African Americans simply would not have had the ability to command access to credit and thus the capacity to run into the kind of difficulty that would have landed them in bankruptcy court. More often than not, difficulties would have been resolved in short-lived Freedmen's courts, the jurisdictions of which were quickly passed on to state courts. The patterns of the few African-American filings suggests further confirmation of Eric Foner's argument that they quickly came to lose confidence in both state and federal courts' willingness to protect their rights.

The Act provided local corporations and partnerships with a disproportionate legal advantages that favored local over distant--or in legal terms--domestic over foreign obligations. Voluntary bankruptcy discriminated in favor of partners; that is, if an individual partner entered into voluntary bankruptcy, he could trigger bankruptcy for the remaining partners and obtain discharge of the debts associated with the partnership. In practice this relieved burdens connected to a failing partner and facilitated the ability of the remaining partners to continue in business. Local corporations rarely invoked bankruptcy because it would mean their dissolution and the cessation of business, problems against which bankruptcy was supposed to mitigate. Discharge in this instance would have meant the cessation of operations. But small, local corporations used the threat of dissolution and discharge effectively to reduce obligations and stay in business.

The supreme irony of the Bankruptcy Act of 1867 was that its benefactors used the power of the federal government to shield them from the economic consequences of secession. Because Southerners perceived the Bankruptcy Act as an economic measure, they distinguished it from other, politically motivated Reconstruction measures like the reviled Military Occupation and Tenure of Office Acts with which it was bundled. Relief from the consequences of the War, from the burdens incurred before and during the War came as a result of a piece of Reconstruction legislation. State stay laws were only a patchwork response that faltered on inconsistency and Constitutional guarantees of the validity of contracts. Discharge provided a disproportionate benefit to Southerners by removing the dead hand of unproductive and unbearable debt in the nation's most economically depressed region and facilitated the economic reconstruction of the South. Recognized as such, Southerners had few compunctions of availing themselves of its protections. Thus bankruptcy provided an ironic exception to Southerners' reliance upon states' rights to oppose Reconstruction.

Thompson concludes that the repeal of the Bankruptcy Act of 1867 occurred nearly a decade after the need for it had largely disappeared in the American South. Noting that the number of filings had largely declined by the early seventies, she argues that the repeal had little connection to the Panic of 1873. Rather, having economically reconstructed the South, southern congressmen and senators plumped for its repeal on the grounds that it had done its work and had come to be abused as a trap to catch the honest businessmen of the country (Michl White q.v. 137). Thompson argues that opposition to the Act occurred after its utility for Southerners had declined and been replaced by worries over the potential for fraud. It was only after repeal took place that Southerners then used the familiar challenge of states' rights to oppose bankruptcy as an instrument of an alien, overbearing, federal government.

This is a tightly argued, intensively researched book that, in passing, raises some interesting contextual questions. Thompson, for a number of methodological reasons, has narrowed her focus to three sample southern federal districts; however, within this research focus, she could have developed two themes that would have magnified the significance of her work. To what extent did the patterns of external credit relationships contribute to the evolving perception of the Act? For example, was, as she seems to suggest, much early postwar debt owed externally--to persons outside the state, foreigners in the

precise federal definition of the term--while later debt was more regional and local? If that were the case, the benefits of discharge to the region would be more readily apparent in 1867 but less so in 1873. An examination of the patterns of indebtedness just prior 1873 would shed considerable light on not only the nature of repeal, but on investment and capital formation in the Reconstructed South. Obtaining the discharge of debt obligations to northern and foreign bankers and factors exacting usurious interest rates would be an entirely different proposition than collecting honest debts from wastrels and spendthrifts.

The strength of this book is its ability to deal effectively with its chosen topic; the research is intensive, if narrow. Its usefulness comes through its suggestions of important connections with other recent works on debt and bankruptcy and on the economy of the South. Its promise lies in its reflection of an historian capable of giving life to what was once an arcane and obscure topic.

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